

JUL 21 1983

ALEXANDER L. STEVENS,
CLERK

No. 82-1994

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

KIRBY FOREST INDUSTRIES, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

PETITIONER'S REPLY BRIEF

Of Counsel:

SHEINFELD, MALEY & KAY

JOE G. ROADY

ROBBIN R. DAWSON

3700 First City Tower

Houston, Texas 77002

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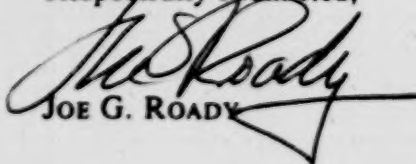
In response to the position of the Government that review by this Court of the decision of the Fifth Circuit Court of Appeals is "premature at this time," Petitioner respectfully calls to the attention of the Court the fact that the remand for further proceedings does not include the question of the determination of the date of taking. That matter, therefore, is final, is not, as contended by the Government, interlocutory, and is, therefore, ripe for review.

Petitioner sought review by this Court at this time in order to avoid a multiplicity of appeals. If the Court grants the petition and determines the question of the appropriate date of taking, certain guidelines would undoubtedly be provided to the District Court for its further handling of the case, and the question of the appropriate date of taking, being the essential cornerstone for the determination of whether additional evidence should be submitted below, will have been decided by this Court. Otherwise, the case will be returned for further handling in a posture in which the questioned decision of the Court of Appeals is the basis for further determinations by the District Court, rather than a controlling decision by this Court, in which event all matters decided below on remand will be of doubtful stability, requiring not only another appeal to the Court of Appeals, another petition to this Court, and yet another remand to the District Court for further proceedings in the event this Court should determine the date of taking question favorably to Petitioner in such subsequent proceeding.

Judicial economy suggests that the entire proceeding would be more efficiently concluded if this Court determines the date of taking question now rather than later.

It is, therefore, respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,



JOE G. ROADY

Of Counsel:

SHEINFELD, MALEY & KAY